

#### **NOTE CHANGES MADE BY THE COURT**

All future discovery filings shall include the following language on the cover page:  
" [Referred to Magistrate Judge Suzanne H. Segal]"

**NOTE CHANGES MADE BY THE COURT**

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

Having reviewed the parties' "Stipulation for Protective Order re: Protection of Confidential Matter," and finding good cause therefore, the Court hereby accepts said stipulation. Pursuant thereto, discovery of information deemed by a party to be confidential shall be governed by the following rules.

1     I.     CONFIDENTIAL MATTER DEFINED.

2       A.     Generally.

3           As used herein "Confidential Matter" shall mean any information,  
4     documents, things, or writings (as defined in *California Code of Civil Procedure*  
5     section 2016.020 and *Evidence Code* section 250), including without limitation  
6     written discovery requests or responses, or other tangible or intangible items or  
7     matter, produced, disclosed or made available in the course of this litigation by any  
8     party, that is or contains a trade secret or information that is proprietary, financial  
9     in nature, or is otherwise private or commercially sensitive, and which such party  
10    (the "Designating Party") designates as "CONFIDENTIAL" or "CONFIDENTIAL  
11    – ATTORNEYS' EYES ONLY" by conspicuous lettering on the face or cover of  
12    the document or other item, or by written notice enclosing the information or  
13    documents designated as Confidential Matter. "Confidential Matter" includes the  
14    confidential information contained within any such information, documents,  
15    things, or writings so designated. And each party understands that the material is  
16    in fact confidential. Confidential Matter also includes both information produced  
17    by a party or a non-party pursuant to a subpoena. The terms "CONFIDENTIAL"  
18    or "CONFIDENTIAL – ATTORNEYS' EYES ONLY" shall be used to designate  
19    only that Confidential Matter which the Designating Party believes in good faith to  
20    constitute or contain highly sensitive business information, customer information,  
21    product information, technological information, ongoing research and development  
22    projects, personal information of Designating Party, personal financial information  
23    of any former or current employees, or other confidential information that will  
24    competitively harm the Designating Party if it becomes known to any person or  
25    entity other than the Designating Party.

26           Any documents, information and/or deposition testimony produced by any  
27    parties in this litigation or third parties, that are not designated as  
28    "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY," and

1 not so designated subsequently by any party, will not be treated as a Confidential  
2 Matter under this Order, and may be disclosed by any party for the purposes of this  
3 litigation without violating this agreement.

4       **B. Deposition Testimony.**

5       Any party may, in good faith and with good cause, designate an entire  
6 deposition itself as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS'  
7 EYES ONLY" at the conclusion of the deposition, or any session or portion  
8 thereof, if the party believes confidential material will be contained in the  
9 deposition transcript. The Designating Party shall have two weeks after receipt of  
10 the certified deposition transcript to make a determination as to the portions of the  
11 testimony which the party believes are confidential. Until the two week period has  
12 expired, the entirety of any deposition which has been designated at the deposition  
13 as containing confidential material shall be treated as constituting Confidential  
14 Matter.

15       1. After designation of the portions of the transcript deemed confidential,  
16 each designated page of the original and of all copies of the transcript shall be  
17 marked as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES  
18 ONLY" and the original and each copy of the transcript shall thereafter be  
19 maintained according to one of the following procedures, at the option of counsel  
20 with custody of that copy: Either, (1) The entire transcript shall be marked and  
21 treated as confidential (in which case counsel shall nevertheless maintain with that  
22 copy the designation indicating the particular portions marked as confidential); or,  
23 (2) Those pages containing confidential matter shall be physically separated from  
24 the remainder of the transcript, and maintained as a separate, confidential  
25 document.

26       2. If possible to designate those portions of the transcript deemed  
27 confidential at the time of the deposition, the parties may agree to have the  
28 designated portions separately transcribed at the outset.

1       3. If, during the course of a deposition or other testimony, counsel for  
2 any party states that the interrogation concerns information that is subject to  
3 designation as "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES  
4 ONLY", persons who are not authorized to receive such confidential information  
5 shall be excluded from the deposition or testimony so designated. In the event that  
6 the disclosure may occur during court proceedings, the parties shall confer with the  
7 Court as to the proper procedure for handling the Confidential Matter.

8 **II. TREATMENT OF CONFIDENTIAL MATTER.**

9       A. **Generally.**

10      Confidential Matter made available to any party or other person hereunder:

11       1. Shall be marked, stamped, or designated by written notice as  
12 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY";

13       2. Shall be used solely in connection with this action in accordance with  
14 the terms hereof, and not in connection with any other action;

15       3. Shall not be used for any business, commercial, personal or  
16 competitive purpose by the party at any time;

17       4. Shall not, except as provided in this Order, be disclosed to or  
18 discussed with any person (including without limitation the media or member of  
19 the public) for any purpose, nor shall Confidential Matter be posted on the Internet  
20 including on any social website);

21       5. Shall in all other respects be treated and maintained in a confidential  
22 manner under a standard of care which a reasonable person would exercise in  
23 maintaining the confidentiality of proprietary information of great value; and

24       6. Shall not be given, shown, made available, or communicated in any  
25 way to any person or entity other than the following persons (each a "Qualified  
26 Person"):

27           (a) Plaintiffs' counsel (Barnes & Thornburg LLP), the staff and  
28 supporting personnel employed by Plaintiff's counsel who are working directly on

1 this litigation under the supervision of such counsel, and such other persons or  
2 persons to whom it is necessary to disclose Confidential information for purposes  
3 of this litigation, including outside vendors, local counsel or independent  
4 contractors retained by Plaintiffs' counsel in the ordinary course of business to  
5 assist in this litigation. As used in this paragraph, "staff and supporting personnel"  
6 does not include "independent experts or consultants," which are addressed instead  
7 in section II.A(6)(e) of this Protective Order.

8                         (b) Defendants' counsel (Christie, Parker & Hale, LLP.; Collins  
9 Collins Muir + Stewart LLP), the staff and supporting personnel employed by  
10 Defendants' counsel who are working directly on this litigation under the  
11 supervision of such counsel, and such other persons or entities to whom it is  
12 necessary to disclose Confidential information for purposes of this litigation,  
13 including outside vendors, local counsel, or independent contractors retained by  
14 Defendants' counsel in the ordinary course of business to assist in this litigation.  
15 As used in this paragraph, "staff and supporting personnel" does not include  
16 "independent experts or consultants," which are addressed instead in section  
17 II.A(6)(e) of this Protective Order.

18                         (c) The Court and court personnel, stenographic reporters and  
19 videographers at depositions taken in this action or the Declaratory Judgment  
20 Action, and any jury empanelled in this action or the Declaratory Judgment Action.

21                         (d) Parties to this action, to the extent necessary for such parties to  
22 see the Confidential information for purposes of this action. For purposes of this  
23 Agreement, "Parties" shall include insurance representatives affiliated with a party  
24 in the course of this litigation.

25                         (e) Independent experts or consultants retained by a party for  
26 advice or services directly related to this action or the Declaratory Judgment  
27 Action, including any employees, associates or independent contractors retained by  
28 those experts to assist in their work in this action or the Declaratory Judgment

1 Action. Counsel desiring to disclose Confidential information to such experts or  
2 consultants shall first obtain a signed undertaking, in the form of Exhibit "A"  
3 attached hereto, from each such expert or consultant. If counsel desires to disclose  
4 Confidential information to an independent expert or consultant who has been  
5 affiliated in any way with a competitor of another party, counsel shall also provide  
6 the other party's counsel with the name, business address, competitor name and  
7 address, and current curriculum vitae of the expert or consultant. No Confidential  
8 information shall be disclosed to any independent expert or consultant for a period  
9 of fifteen (15) business days after service of the signed undertaking and/or  
10 competitor information upon opposing counsel or until the Court order allows such  
11 disclosure pursuant to the procedures set forth in section II.C of this Protective  
12 Order.

**B. Scope of Disclosure Permitted for Trial Preparation.**

20       1. Confidential Matter designated as "CONFIDENTIAL" may be  
21 disclosed only to any party, counsel of record in this action and staff employed by  
22 such counsel, experts and consultants retained by counsel (or by a party acting  
23 through its counsel in this action), and any insurance carriers and their personnel  
24 and consultants, but only as necessary for the purposes of this litigation and only in  
25 accordance with this Order. Permissible disclosures to a party hereunder include  
26 disclosures to officers, directors, owners, and employees of such party who have a  
27 reasonable and good faith need for access to the Confidential Matter designated as  
28 "CONFIDENTIAL" for the prosecution or defense of this action. Furthermore,

1 nothing within this Protective Order shall limit or prevent a Designating Party from  
2 disclosure or use of any Confidential Matter in compliance with its legal  
3 obligations or privileges to disclose or use such information. Prior to disclosure,  
4 the party or counsel disclosing Confidential Matter designated as  
5 "CONFIDENTIAL" shall inform such persons that the matter is confidential and  
6 may not be disclosed except as provided in this Order, and the person to whom  
7 such disclosure is made shall execute a copy of the Confidentiality Agreement  
8 attached as Exhibit "A." In the event the Designating Party grants written consent  
9 that Confidential Matter may be disclosed to any category of person not denoted  
10 above or otherwise contemplated herein, such person or persons shall, prior to any  
11 disclosure, execute a copy of the Confidentiality Agreement attached as Exhibit  
12 "A."

13       2. Confidential Matter designated as "CONFIDENTIAL –  
14 ATTORNEYS' EYES ONLY" may be disclosed to counsel of record in this action  
15 and staff employed by such counsel, to independent experts or independent  
16 consultants retained by counsel of record for purposes of this action, and to any  
17 insurance carriers and their employees and consultants. Prior to any such  
18 disclosure to independent experts or consultants, the party or counsel disclosing  
19 Confidential Matter designated as "CONFIDENTIAL – ATTORNEYS' EYES  
20 ONLY" shall inform such persons that the matter is confidential and may not be  
21 disclosed, except as provided in this Order, and the person to whom such  
22 disclosure is made shall execute a copy of the Confidentiality Agreement attached  
23 as Exhibit "A." Confidential Matter designated as "CONFIDENTIAL –  
24 ATTORNEYS' EYES ONLY" shall not be disclosed to any category of persons  
25 not specified in this paragraph without the written consent of counsel for the  
26 Designating Party. In the event such consent is granted, such person or persons  
27 shall, prior to any disclosure, execute a copy of the Confidentiality Agreement  
28 attached as Exhibit "A."

1           **C.     Objections to Disclosure of Confidential Matter to Independent**  
2           **Experts or Consultants.**

3           If a party objects to the proposed submission of Confidential Matter to an  
4 independent expert or consultant or other individuals identified in section  
5 II.A(6)(e), that party shall notify the party who retained the expert or consultant in  
6 writing of its objection, the specific Confidential Matter whose disclosure is  
7 subject to the objection, and the grounds for each such objection within the fifteen  
8 (15) business day period specified in section II.A(6)(e). If no objection is made in  
9 such time and manner, the party who retained the expert or consultant may disclose  
10 Confidential Matter to such person subject to the provisions of this Protective  
11 Order. If a timely and proper objection is made, the party who wishes to make the  
12 disclosure shall withhold disclosure of the Confidential Matter subject to objection  
13 until such time as the parties informally resolve their dispute or the Court, upon  
14 motion by the party seeking disclosure, decides whether and/or under what  
15 conditions the disclosure may occur. In the event that a dispute regarding  
16 providing discovery of Protected Information to an expert or consultant is  
17 unresolved during a time when any deadline to name any expert witness or to  
18 provide any disclosure of expert witness testimony is pending, the parties shall  
19 stipulate and agree to a reasonable extension of the deadline for naming an expert  
20 witness or providing any required disclosure.

21           **D.     Use at Court, in Briefs or as Exhibits.**

22           Confidential Matter submitted to the Court, including that used as exhibits to  
23 or incorporated in any other manner in briefs, memoranda, transcripts or testimony  
24 or other documents filed or lodged with the Court, shall be protected as follows:

25           **1.     Materials Filed or Lodged.**

26           A party seeking to file Confidential Matter shall apply to the Court to file  
27 such information under seal, as outlined in the <sup>LOCAL RULE 79-2d</sup> Court's Standing Order. Should the  
28 Court determine that such material may not be filed under seal, the information

1 shall thereafter be treated as if it is not Confidential Matter.

2           **2. Hearings and Trial.**

3           At any hearing before the Court, counsel shall use good faith efforts to avoid  
4 disclosing Confidential Matter. If any counsel believes it is necessary to disclose  
5 Confidential Matter during a hearing, ~~said counsel shall confer with the other~~  
~~counsel present and the Court to agree upon a method by which the confidentiality~~  
~~of the Confidential Matter can be preserved. Should a transcript of the hearing be~~  
6 ~~made, it shall be treated the same as a deposition pursuant to section I.B above:~~

7           **3. Use in Depositions or Witness Preparation.**

8           Subject to other limitations set forth herein, the parties, acting through their  
9 attorneys of record, may utilize Confidential Matter in the deposition of any  
10 witness or the preparation of any witness for testimony, provided that it is  
11 necessary for legitimate discovery or trial purposes.

12           **E. Preservation of Executed Confidentiality Agreements.**

13           A copy of each executed Confidentiality Agreement shall be retained in a  
14 secure place by counsel for the party disclosing Confidential Matter. Counsel  
15 shall, immediately upon request, provide copies of the Confidentiality Agreements  
16 executed by each person identified by counsel for the adverse party, provided that  
17 the requesting party is otherwise entitled to discover the identity of the person(s)  
18 who executed the Confidentiality Agreement.

19           **III. LIMITATIONS, EXCLUSIONS, QUALIFICATIONS.**

20           **A. Matters Outside the Scope of this Protective Confidentiality**  
21           **Order.**

22           The terms of this Order shall not be construed: (a) to prevent any party or its  
23 respective counsel from making use of information which was lawfully in its  
24 possession prior to the date of this Order; (b) to apply to information which was, is,  
25 or becomes public knowledge, not in violation of this Order; or, (c) to apply to  
26 information which any of the parties or its counsel lawfully obtains from a third  
27 party.

1 party who has not derived the information from any of the parties to this action or  
2 improperly obtained such information.

3       **B. No Inferences.**

4       Neither the existence of this Order, nor the designation by any Party of any  
5 information, documents, things or writings as confidential pursuant to this Order  
6 shall, in and of itself, raise any inference as to the admissibility of any information,  
7 documents, things or writings marked for identification purposes or introduced in  
8 evidence at the trial of this action. Further, nothing herein shall preclude the  
9 Designating Party from seeking confidential treatment from the Court with respect  
10 to any information, documents, things or writings or from raising any available  
11 objection to the disclosure, production, or admissibility of evidence, including  
12 claims of privilege.

13       **C. Inadvertent Production.**

14       Inadvertent production of any information, document, thing or writing  
15 without a designation of "CONFIDENTIAL" or "CONFIDENTIAL –  
16 ATTORNEYS' EYES ONLY" shall not by itself be deemed a waiver of the claim  
17 of confidentiality by the Designating Party as to such matter, and any party  
18 thereafter may designate the same as "CONFIDENTIAL," or "CONFIDENTIAL –  
19 ATTORNEYS' EYES ONLY."

20       Any party that discovers a document produced by another party that appears  
21 to the inspecting party, acting in good faith, to be a potentially privileged or  
22 confidential document shall notify the producing party in writing by fax and mail  
23 of the potentially privileged document. The producing party shall have five (5)  
24 business days following receipt of faxed notice to review the potentially privileged  
25 document and, in the event that the producing party determines that the document  
26 is subject to a privilege and was inadvertently produced, to notify all parties that  
27 the document was inadvertently produced. Any party that has obtained a copy of  
28 such a document shall immediately return all hard copies of the document to the

1 producing party along with a note asserting under oath that all copies are being  
 2 returned. Electronic copies of said document shall be deleted. No party shall use  
 3 for any purpose any privileged document inadvertently produced. In addition, the  
 4 producing party, at its sole election and expense, may seek to remove the subject  
 5 document from any disks that were produced to the parties. The non-producing  
 6 parties shall cooperate in this endeavor. In the event of a good faith dispute  
 7 relating to the provisions of this paragraph, any aggrieved party may bring the  
 8 matter to the Court's attention by noticed or ex parte motion. Pending a ruling by  
 9 the Court on any such motion, in the interim the document that is the subject of this  
 10 dispute shall be treated as an inadvertently produced document and shall not be  
 11 used for any purpose in a proceeding or deposition.

12 **IV. CHALLENGES AND OBJECTIONS TO DESIGNATIONS.**

13 Any party may object to a designation of documents or information as  
 14 "CONFIDENTIAL" or "CONFIDENTIAL - ATTORNEYS' EYES ONLY" by  
~~following procedures in Local Rule 37. SWS~~  
~~serving a written objection upon the Designating Party within a period of time~~  
~~reasonable under the circumstances. The Designating Party shall notify the~~  
~~objecting party in writing of the bases for the asserted designation within ten (10)~~  
~~calendar days after receiving any written objection. The parties shall confer in~~  
~~good faith as to the validity of the designation within five (5) calendar days after~~  
~~the objecting party has received the notice of the bases for the asserted designation.~~  
 15 *SWS*  
 16 The Objecting Party has the burden to move the Court for an order removing such  
 17 a designation within a reasonable period of time, after conferring with the  
~~in Local Rule 37. SWS~~  
 18 Designating Party, consistent with any procedures outlined in the Court's Standing  
 19 Order. The Designating party then shall have the burden of establishing the  
 20 documents, information and/or deposition testimony are confidential and subject to  
 21 protection. Until the Court issues a ruling on any motion or application filed under  
 22 this section, the parties shall treat the information or materials in question as  
 23 Confidential Material pursuant to the designation given.  
 24 *SWS*  
 25

1     **V. TERMINATION OF ACTION.**

2         Within thirty (30) days of the final termination of this proceeding, including  
3         without limitation, any appeal or retrial, Confidential Matter shall be returned to  
4         the producing party through that party's counsel of record. Counsel shall make  
5         their best efforts to retrieve and return Confidential Matter which they have  
6         disclosed to third parties in accordance with this Order; however, any third party  
7         which fails to return said material shall bear any responsibility for said failure  
8         directly to the producing party. Counsel may retain their work product containing  
9         Confidential Matter in a confidential manner as part of their files in the ordinary  
10        course of business, on condition that such retention shall not give counsel the right  
11        to disclose Confidential Matter in any other action or to use Confidential Matter for  
12        any other purpose.

13     **VI. SURVIVAL AFTER TERMINATION OF ACTION.**

14         This Order shall remain in force and effect indefinitely until modified,  
15         superseded, or terminated by further order of this Court. After the termination of  
16         this action, this Order shall continue to be binding upon the parties hereto, and  
17         upon all persons to whom Confidential Matter was disclosed or communicated.

18     **VII. OTHER PROCEEDINGS.**

19         If any person in another action serves on a party a subpoena *duces tecum* or  
20         other request for production of Confidential Matter covered by this Order, that  
21         party shall immediately notify the Designating Party of any such request, and shall  
22         notify the person serving such request that such materials are covered by this  
23         Order. Unless within ten (10) days of receipt of such notification the request for  
24         production or subpoena is withdrawn, or the Designating Party applies for a court  
25         order precluding and excusing the party from complying with such request, the  
26         party giving notice shall be free to produce the Confidential Matter. If the  
27         Designating Party applies for such an order, the party upon whom the subpoena is  
28         served shall not produce the Confidential Matter until after the court rules on such

1 application. Nothing stated herein shall require any party to violate the terms of a  
2 valid court order.

3 **VIII. MODIFICATION.**

4 This Order may be modified by written agreement of the parties or pursuant  
5 to further order of this Court upon the request of any party.

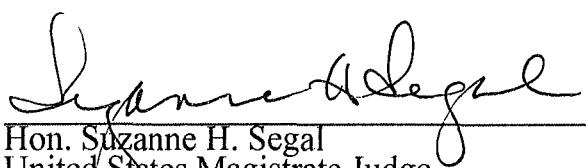
6 **IX. REMEDIES.**

7 The Designating Party shall be entitled to all remedies existing under law  
8 and equity in the event of any unauthorized disclosure of Confidential Matter, or  
9 any other breach of this Order, by any party to this action or by any person to  
10 whom a party to this action has disclosed any Confidential Matter.

11 In the event that any person or entity shall violate, or threaten to violate, any  
12 term of this Protective Order, any party may immediately apply to this Court or  
13 other court of competent jurisdiction for injunctive relief <sup>pursuant to L.C.T.</sup> against such person or  
14 entity. If the aggrieved party applies for injunctive relief, then the respondent  
15 person or entity shall not employ as a defense or claim that the aggrieved party  
16 possesses an adequate remedy at law. Each person and entity to whom disclosure  
17 of Confidential Matter is made, agrees to subject himself/herself to the jurisdiction  
18 of this Court only for the purpose of proceedings relating to the performance  
19 under, compliance with, or violation of this Protective Order.

20 *For good cause shown*  
21 **IT IS SO ORDERED.**

22  
23  
24 Dated: 2/15/13

  
25 Hon. Suzanne H. Segal  
United States Magistrate Judge

26 All future discovery filings shall  
27 include the following language  
on the cover page:  
28 "[Referred to Magistrate Judge  
Suzanne H. Segal]"